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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 19, 1998

APPLICATION OF

VIRGINIA ELECTRIC AND  
POWER COMPANY

CASE NO. PUE980462

For Approval of Expenditures  
for New Generation Facilities  
pursuant to Va. Code § 56-234.3  
and for a Certificate of Public  
Convenience and Necessity Pursuant  
to Va. Code § 56-265.2

PROTECTIVE ORDER

On November 4, 1998, Virginia Electric and Power Company ("Virginia Power") filed a motion requesting the entry of a protective order setting forth the procedures by which confidential information shall be handled generally in this proceeding.

On November 16, 1998, pursuant to prior Order of the Commission, responses to Virginia Power's motion were filed by the Virginia Committee for Fair Utility Rates ("Committee") and the Virginia Independent Power Producers ("VIPP"). Both VIPP and the Committee suggested modifications to the proposed Protective Order submitted by Virginia Power. The Commission, having considered the pleadings, will adopt certain of the suggestions of the respondents and make certain other changes to

the proposed Protective Order, to permit full and meaningful participation by interested parties, and permit the protection of sensitive information.

UPON CONSIDERATION of Virginia Power's request, the Commission is of the opinion and finds that said request should be granted as modified. Accordingly,

IT IS ORDERED THAT any documents, materials, and information to be produced by Virginia Power, either for itself or for its affiliates, or to be produced by any other party ("Other Party") in this proceeding in response to Commission orders, Commission Staff ("Staff") data requests or properly propounded interrogatories or requests for production of documents in this proceeding, which documents, materials, or information the producing party designates as confidential ("Confidential Information"), shall be examined and used only in accordance with the following conditions:

(1) All Confidential Information produced to Virginia Power, Staff, or Other Parties shall be used solely for the purposes of this proceeding (including any appeals).

(2) Access to Confidential Information shall be specifically limited to Virginia Power, Staff or Other Parties, their counsel and expert witnesses, and to support personnel who are working on this case under the direction of their counsel or expert witnesses and to whom it is necessary that the

Confidential Information be shown for the purposes of this proceeding, so long as each such person has executed an Agreement to Adhere to the Protective Order ("Agreement"), which is Attachment A to this Protective Order. All Agreements must be promptly forwarded to the producing party upon execution.

(3) In the event that Virginia Power, Staff or Other Parties seek permission to grant access to any Confidential Information to any person other than the persons authorized to receive such information under paragraph (2) above, the party desiring permission shall obtain the consent of counsel for the producing party. In the event of a negative response, the party seeking disclosure permission may apply to the Commission for such permission.

(4) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under paragraph (2) above unless specifically ordered by the Commission to do so. Parties are encouraged to seek consents to the maximum extent practicable.

(5) In the event that Virginia Power or Other Parties contend that they should not be required to produce specific documents, materials or information due to their commercially or competitively sensitive nature ("Competitively Sensitive Information"), Virginia Power or such Other Party shall bear the

burden of proving that such specific documents, materials, or information should not be discoverable, including a showing that the information cannot be adequately protected by an appropriate non-disclosure agreement. For purposes of responding to data requests propounded by the Staff or the Division of Consumer Counsel, Office of the Attorney General ("Attorney General") in this proceeding, the production and handling of Competitively Sensitive Information shall be governed by the terms of an appropriate nondisclosure agreement between the producing party and the Staff or the Attorney General.

(6) A party withholding Competitively Sensitive Information from any participant <sup>1</sup> shall immediately provide all participants with a log enumerating all such information. The log shall specify the following about the information withheld: (i) the original requesting party; (ii) the data request number and date of the request; (iii) the type of information (e.g., computer-stored information, microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying it; (iv) its present location and custodian; (v) the nature of the information; (vi) the basis for the claim that the information is competitively sensitive. The

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<sup>1</sup> For purposes of this Protective Order, the term "participant" means all parties and Staff.

withholding party shall telefax updates to the log, if any, to all participants on the first occasion "Competitively Sensitive Information" is withheld from any participant, and thereafter on a weekly basis, for the duration of this proceeding. The obligations imposed by this paragraph shall be in addition to the withholding party's obligation to make specific objections to a data request that seeks Competitively Sensitive Information.

(7) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding which the producing party has designated, in whole or in part, as Confidential Information or Competitively Sensitive Information.

(8) In the event Virginia Power, Staff or Other Parties seek to introduce at a hearing testimony, exhibits, or studies that disclose Confidential Information, the Staff or the party seeking such introduction shall:

- (a) notify the producing party at least three (3) days in advance of any such hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party;
- (b) if such testimony is prefiled, file such testimony, exhibits or studies with the Commission under seal and serve on all parties of record copies of the

testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated Confidential Information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless and until the Commission rules to the contrary. Each party shall, upon signing Attachment A to this Protective Order, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the Confidential Information and each party and counsel shall be bound by this Order insofar as it restricts the use of and granting of access to the Confidential Information.

(9) Oral testimony regarding Confidential Information, if ruled admissible by the Commission, will be taken in camera and that portion of the transcript recording such testimony shall be placed in the record under seal.

(10) In the event Virginia Power, Staff, or Other Parties seek to introduce at a hearing testimony, exhibits or studies that disclose Competitively Sensitive Information, the Staff or the party seeking such introduction shall notify the producing party at least ten (10) days in advance of any such hearing unless a shorter period is necessary or would not unduly

prejudice the producing party. Any testimony regarding Competitively Sensitive Information shall be taken in camera and in the presence of only those persons who have been granted access to the specific Competitively Sensitive Information pursuant to a nondisclosure agreement with the producing party and such other persons the Commission may designate and who, upon designation, execute an appropriate non-disclosure agreement satisfactory to the Commission. That portion of the transcript recording such testimony shall be placed in the record under seal.

(11) In the event Virginia Power, Staff or Other Parties pre-file with the Commission and serve on other participants other testimony, exhibits or studies from which Competitively Sensitive Information has been deleted, the participant shall immediately notify all participants and provide them with a general description of the Competitively Sensitive Information that has been deleted. To satisfy this requirement, the participant shall refer to a specific entry or entries on the log required by Paragraph (6) of this Order, if applicable. Otherwise, the participant shall describe the deleted Competitively Sensitive Information by providing substantially the same information required by Paragraph 6. The notification shall be made by telefax on or before the first business day after the filing of the written testimony, exhibits or studies.

In the event Virginia Power, Staff or Other Parties seek to introduce testimony, exhibits or studies containing references to Competitively Sensitive Information at hearing, such notification shall be provided under the supervision of the Commission.

(12) No person authorized under this Protective Order to have access to Confidential Information shall disseminate, communicate, or reveal any such Confidential Information to any person not specifically authorized under this Protective Order to have access.

(13) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Order shall be returned by Virginia Power and Other Parties to the producing party (or destroyed) if requested to do so by the producing party. At such time, any originals or reproductions of any Confidential Information in Staff's possession will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Protective Order restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this

proceeding (including any appeals) as to the Confidential Information.

(14) This Protective Order does not preclude Virginia Power, Staff or any Other Party from arguing, prior to public disclosure, that documents, materials, and information received under the Order should not be treated as confidential. But in no event shall any party disclose Confidential Information it has received subject to the Protective Order absent a finding by the Commission that such information does not require confidential treatment. If Virginia Power, Staff or any Other Party desires to make such an assertion, the producing party shall be given reasonable notice before being required to bear the burden of proving the contrary, and reasonable notice shall be at least three (3) days in advance of a hearing in connection with testimony that is not prefiled and that contains Confidential Information. The burden of proving that documents, materials, or information require confidential treatment as trade secrets, commercially or personally sensitive information, or other grounds for confidential treatment shall be upon the proponent of maintaining the documents, materials, or information in confidence.

(15) A producing party is obligated to separate non-confidential and noncompetitively sensitive documents, materials, and information from Confidential Information and

Competitively Sensitive Information wherever practicable, and to provide the non-confidential and noncommercially sensitive documents, materials, and information.

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COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

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ATTACHMENT A

APPLICATION OF

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AGREEMENT TO ADHERE TO PROTECTIVE ORDER

I, \_\_\_\_\_, on behalf of and representing  
\_\_\_\_\_, hereby acknowledge having read and  
understood the terms of the Protective Order entered in this  
proceeding by the Commission on \_\_\_\_\_, 1998, and agree to  
treat all Confidential Information that I receive in connection  
with this Case No. PUE980462 as set forth in that Protective  
Order.

Signature: \_\_\_\_\_

On behalf of: \_\_\_\_\_